IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 33822 of 1998

Between:

S.Jayavarma S/o Musalaiah,aged 24 years,
R/o Visakhapatnam

..... PETITIONER.

AND

1 Secretary & Correspondent, Visakhapatnam Part Educational Society Visakhapatnam
2 S.Shiva Sankara Satyanarayana S/o Appala Naidu, aged 43 years, employee, C/o Port High School II Housing Colony Saligramapuram, Visakhapatnam – 24.
3 K.V.Ramana Rao S/o Appar Rao,aged 32 years, occupation:

Record Assistant, Port High School II, Housing Colony, Saligramapuram, Visakhapatnam - 24
4 Regional Joint Director for School Education, Kakinada, East Godavari Dist
5 District Educational Officer, Visakhapathnam District
Old Post Officer (near) Visakhapatnam -1

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction, or a writ especially one in the nature of a Writ of Mandamus declaring the order No. VPES/21/Rect/98/180 dt. 27/11/98 and No.VPES/21/Rect./98/181 issued by the 1st Respondent as illegal, injust and void after calling for the necessary records culminating in the same and to suspend the operation of the orders No.VPES/21/Rect/98/180 and No.VPES/21/Rect/98/181 of the Ist respondent, pending disposal of the above writ petition and to pass such further or other orders as this Hon'ble Court deems fit and proper.

(Prayer is amended as per Court order dated 26/7/2004 in WPMP: 1256/04.)

Counsel for the Petitioner: MR. V.PARABRAHMA SASTRI.

Counsel for the second Respondent: M/S.K.Jaganmohanreddy.

Counsel for the respondents 1 and 3 : None appeared.
Counsel for the Respondents 4 and 5: GP FOR SCHOOL EDUCATION

The Court made the following :

ORDER:

This Writ Petition is filed seeking a declaration that the order No.VPES/21/Rect/98/180, dated 27-11-1998 issued by the first respondent reverting the petitioner from Record Assistant to Attender, as illegal and further, the appointment of the second respondent as Record Assistant is also challenged by way of amendment.

It seems that the petitioner was appointed on compassionate grounds in view of the retirement of his father Musalayya, who was a Record Assistant, on medical grounds. Initially, he was appointed as watchman on a consolidated salary of Rs.600/-. Thereafter, on representation made by him, he was promoted as Record Assistant with effect from 11-1-1995. Challenging the said proceedings, Writ Petition No.637 of 1995 was filed. This Court allowed the Writ Petition on 21-71997 with a direction that the petitioner therein (Second Respondent herein) shall be entitled for the promotion to the post of Record Assistant among such posts existing on particular date on which he was entitled to be considered for promotion which shall be examined and determined by the first respondent by following the procedure. Further, it was held that the fourth respondent i.e., petitioner herein shall be entitled to be appointed for any post to which he was eligible as on the date of his father's retirement on medical grounds including the post of Record Assistant regarding which the respondents 1 and 2 therein shall determine. The reservation of hundred point roaster under Rule-22 shall be determined according to the number of posts and the point to which each of the posts has to be filled up and that shall be the duty of the first respondent. In pursuance of the said orders, the impugned proceedings were passed subject to the approval of the competent authority.

Sri V.Parabrahma Sastry, the learned counsel for the petitioner, submits that the reversion of the petitioner from the post of Record Assistant to the Attender by the impugned proceedings is contrary to the Judgment of this Court dated
21-7-1997 in W.P.No.637 of 1995. He submits that in the earlier writ petition No.637 of 1995 itself, it was made it clear that the petitioner herein i.e. the fourth respondent therein belongs to the Scheduled Caste community and his case should be considered keeping in view his

eligibility as on the date of retirement of his father on medical grounds. Since it was observed in the said Judgment that the rule of reservation must be followed as per the hundred point roaster and if this is taken into consideration, in all, there are six Record Assistant Posts in the first respondent school and the petitioner is entitled for being accommodated against any of the vacancies since at least one vacancy must be reserved for the Schedule Caste candidate. Since the petitioner admittedly belongs to the scheduled Caste community, he was entitled for being accommodated against the roaster reserved for the scheduled Caste, among six vacancies. Whereas, while considering the promotion of the second respondent herein, in pursuance of the judgment in Writ Petition No.637 of 1995 dated 21-7-1997, the case of the petitioner was not considered as ordained by this Court. Therefore, it must be deemed that the impugned proceedings passed by the first respondent were contrary to the said judgment of this Court.

The learned Counsel for the second respondent submits that the post to which the petitioner was entitled was only to the substantive post of Attender and he could not have been promoted to the post of Record Assistant directly stating that his father Musalayya was working as Record Assistant against the Scheduled Caste vacancy and against the said vacancy, petitioner ought to have been promoted. This was already a subject matter of earlier Writ Petition No.637 of 1995 and the Judgment in the said case has become final; therefore, the question of petitioner claiming seniority in the cadre of watchman to which post he was appointed on consolidated pay also does not arise. At the most, the petitioner is entitled for being appointed as an Attender in a regular vacancy as on the date of his father's retirement on medical grounds. This was exactly what was considered by the authorities taking into consideration the over all situation. The authorities realized that the petitioner herein could not have been appointed as a regular Record Assistant directly since it was promotional post and even otherwise, the petitioner was appointed only on consolidated pay against the post of watchman which was never borne on the cadre strength of the respondent-school.

I have gone through the Judgment dated 21-7-1997 in Writ Petition NO.637 of 1995. In the above Judgment, except observing that the petitioner herein shall be entitled to be appointed for any post to which he was eligible as on the date of his father's retirement on medical grounds and considering the reservation of hundred point roaster under Rule 22 of the Rules, including the post of Record Assistant, no other rights of the petitioner were decided positively. The impugned order categorically shows that the Judgment of the Court was taken into consideration for the purpose of promotion of the second respondent for the post

of Record Assistant.

In my considered opinion, the Judgment in the Writ Petition No.637 of 1995 dated 21-7-1997 does not confer any right on the petitioner to be considered as a Record Assistant straight away. What all it said was that the case of the petitioner may be considered, if there is any vacancy available on the roaster points of the scheduled caste in hundred point as on the date of retirement of his father on medical grounds. But in so far as the promotion of the second respondent herein was concerned, he was eligible as a matter of right in view of the Judgment in Writ Petition No.637 of 1995 dated 21-7-1997. The learned counsel for the petitioner states that the legality or otherwise of the appointment of the petitioner as Record Assistant was never in question. I am of the view that this may not be correct in view of the fact that the said writ petition was filed questioning the appointment of the petitioner as Record Assistant, which was allowed by this Court by Judgment dated 21-7-1997.

Therefore, the impugned proceedings cannot be disturbs and the Writ petition is liable to be dismissed. However, this will not preclude the authorities from considering the promotion of the petitioner to the post of the Record Assistant if he is otherwise eligible and if he satisfies the criteria of being eligible against the roaster point as well as the other qualifications required thereto, considering the period from the date of his appointment as Record Assistant till date, as if the services rendered was in the post of Attender.

Subject to the above observations, the petition is dismissed.

C.V.RAMULU,J

Dated 26-07-2004.

Dvs/Prk

To

1 Secretary & Correspondent, Visakhapatnam Part Educational Society Visakhapatnam
2 S.Shiva Sankara Satyanarayana S/o Appala Naidu, aged 43 years, employee, C/o Port High School II Housing Colony Saligramapuram, Visakhapatnam – 24.
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5 District Educational Officer, Visakhapathnam District
Old Post Officer (near) Visakhapatnam –1

6. Two CCs.to the Government Pleader for School Education, AP High Court Buildings, Hyderabad.(OUT)

7. Two CD copies.